

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

www.montgomerycountymd.gov/content/council/boa/board.asp

Case No. S-2619

PETITION OF JOHN I. CLYDE

OPINION OF THE BOARD

(Opinion Adopted February 9, 2005)
(Effective Date of Opinion: March 3, 2005)

Case No. S-2619 is an application for a special exception pursuant to Section 59-G-2.00 (Accessory Apartment) of the Zoning Ordinance to permit an existing accessory apartment.

On November 12, 2004, the Hearing Examiner for Montgomery County held a public hearing on the application, and on January 13, 2005, issued a Report and Recommendation for approval of the special exception.

The subject property is Lot 7, Block D, located at 8113 Chester Street, Takoma Park, Maryland, 20912, in the R-60 Zone

Decision of the Board: Special Exception Granted Subject
To Conditions Enumerated Below.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on February 9, 2005. After careful consideration and review of the record in the case, the Board adopts the Report and Recommendation and **grants** the special exception subject to the following conditions:

1. The Petitioner is bound by Petitioner's testimony, representations and exhibits of record;
2. The Petitioner is bound by the conditions set out in the Memorandum of Alvin Clarkson, Jr., Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 11), that Petitioner will house no more than two unrelated persons, or a family of three, in the accessory

apartment; and will promptly take the following steps:

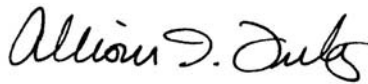
- 1) Secure exterior gutter on rear of house
- 2) Caulk all exterior windows in Accessory Apartment
- 3) Install peep hole in unit entrance door
- 4) Remove solid waste in utility room
- 5) Replace broken window glass in bedroom

3. Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located; and

4. Petitioner must not receive compensation for the occupancy of more than one dwelling unit.

On a motion by Wendell M. Holloway, seconded by Donna L. Barron, with Louise L. Mayer, Angelo M. Caputo and Allison Ishihara Fultz, Chair in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 3rd day of March, 2005.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS
Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

IN THE MATTER OF:

JOHN I. CLYDE,

Petitioner

John I. Clyde

For the Petition

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Alvin Clarkson, Jr.

Department of Housing and

Community Affairs

Board of Appeals Case No. S-2619

(OZAH Referral No. 05-2)

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Before: Françoise Carrier, Hearing Examiner

Martin L. Grossman, Hearing Examiner¹

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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¹ The Hearing in this case was conducted by Hearing Examiner Françoise Carrier. The record was reviewed, in its entirety, by Hearing Examiner Martin L. Grossman, who prepared this report. Board of Appeals Rule 8.0 permits Board members who have not attended a hearing to participate in the decision on a special exception petition after reading the record. The Hearing Examiners conclude that this practice (*i.e.*, a report based on a review of the record) can appropriately be applied to hearings conducted for the Board by the Office of Zoning and Administrative Hearings, especially in cases such as this one where there are no issues relating to credibility of the witnesses and there is no opposition.

V. RECOMMENDATION 21

I. STATEMENT OF THE CASE

Petition No. S-2619, filed on June 4, 2004, seeks a special exception, pursuant to §59-G-2.00 of the Zoning Ordinance, to permit an existing accessory apartment use in a single-family residential structure located at 8113 Chester Street, Takoma Park, Maryland 20912. The subject property is designated Part of Lot 7, Block D, in the subdivision known as Kilmarock Blocks D, E and F. It is zoned R-60, and the Tax Account Number is 01359663.

On August 4, 2004, the Board of Appeals issued a notice that a hearing in this matter would be held before the Office of Zoning and Administrative Hearings on November 12, 2004, at 9:30 a.m., in the Second Floor Hearing Room of the Stella B. Werner Council Office Building.

The Department of Housing and Community Affairs inspected the property on November 10, 2004, and reported the following items requiring correction in a memorandum dated November 10, 2004 (Exhibit 11):

- 1) Secure exterior gutter on rear of house
- 2) Caulk all exterior windows in Accessory Apartment
- 3) Install peep hole in unit entrance door
- 4) Remove solid waste in utility room
- 5) Replace broken window glass in bedroom

Based on the accessory apartment's habitable floor space (702 square feet) and the fact that there is only one bedroom, the Housing Code Inspector, Alvin Clarkson, Jr., determined that the unit can be occupied by no more than two (2) unrelated people or a by a family of up to three (3) members. He also noted that there is room for two (2) off-street parking spaces in the driveway for the accessory apartment.

Technical Staff at the Maryland-National Capital Parks and Planning Commission (M-NCPPC), in a report issued November 10, 2004, recommended approval of the special exception, with conditions. (Exhibit 12).²

A public hearing was convened as scheduled on November 12, 2004, and Petitioner John I. Clyde appeared *pro se*. Also attending was Alvin Clarkson, Jr., Housing Code Inspector of the Department of Housing and Community Affairs. Testimony and an executed affidavit of posting (Exhibit 13) were received from Petitioner, and Housing Code Inspector Clarkson also testified. The record was held open until December 1, 2004, so that Petitioner could submit a copy of his deed and a revised site plan, and to allow time for public comment. On November 17, 2004, Petitioner submitted a copy of his deed (Exhibit 14(b)) and a revised site plan (Exhibit 14(a)), directly to Technical Staff. Technical Staff forwarded this material to the Hearing Examiner, and it was received on December 6, 2004 (Exhibit 14). On December 10, 2004, the record was reopened for 10 days and notice issued (Exhibit 15) to allow public comment. None was received, and the record closed on December 20, 2004.

II. FACTUAL BACKGROUND

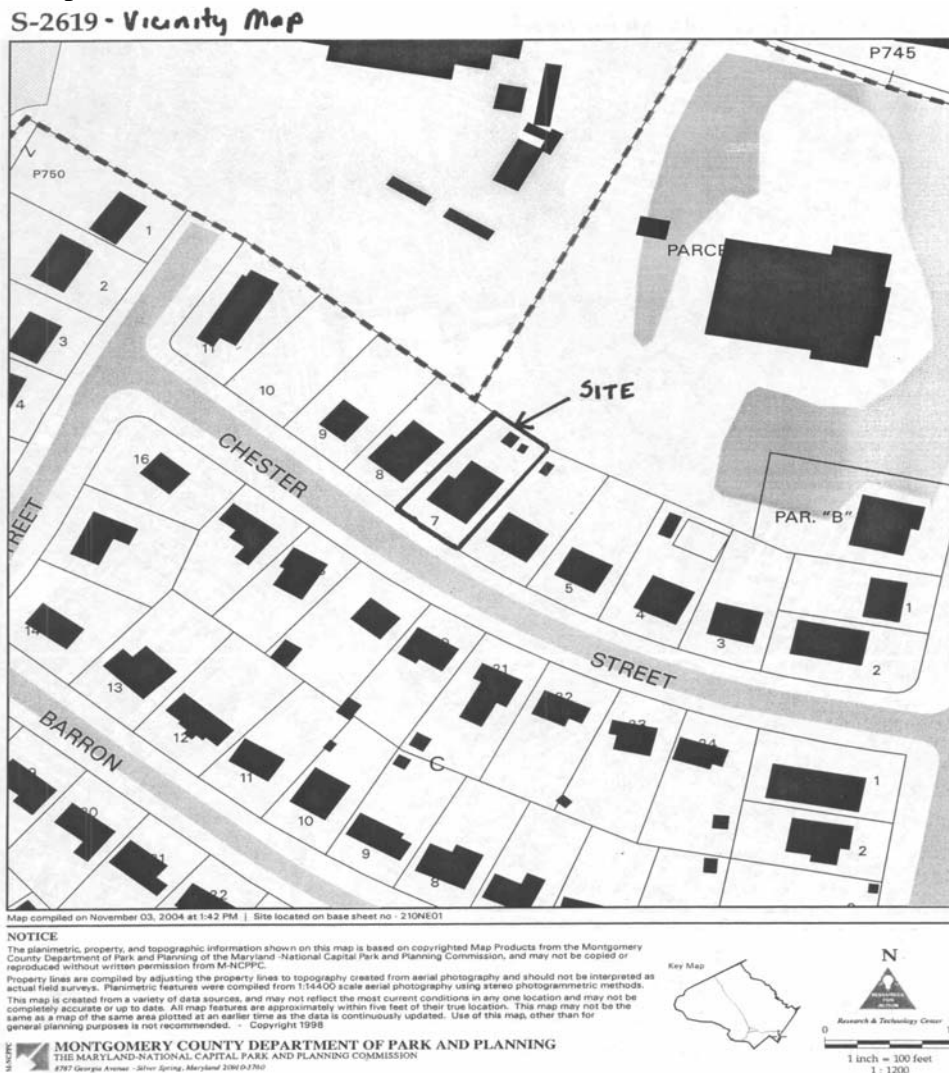
A. The Subject Property

As noted above, the address of the subject property is 8113 Chester Street, Takoma Park, Maryland 20912, and it is designated Part of Lot 7, Block D, in the subdivision

² Technical Staff reports are frequently quoted and paraphrased herein.

known as Kilmarock Blocks D, E and F. The subject property is located approximately 450 feet to the east of the intersection of Chester Street and Carroll Avenue (Md. Route 195) in the R-60 (Residential, one-family, detached) Zone.

The property is approximately 6,613 square feet in area (Exhibit 3(b)), and according to Technical Staff, it is "roughly rectangular" in shape, slopes up to the east, and has a frontage of 61.85 feet along Chester Street. There is no parking along the frontage of the property because parking is prohibited on that entire side of the street, per posted parking restrictions. The property's location is shown in the Vicinity Map attached to the Technical Staff report and reproduced below.



The house was built in 1950 (Exhibit 3(b)), and the property is well described in the Technical Staff report as,

a one-story brick home with a front porch, a full basement, a basement-level garage, a basement addition to the rear of the house, and rear deck above the basement addition; a three-bedroom main unit occupying the main (first) floor and the full basement; an accessory apartment located in the basement addition, with basement-level access from covered external stairs located on

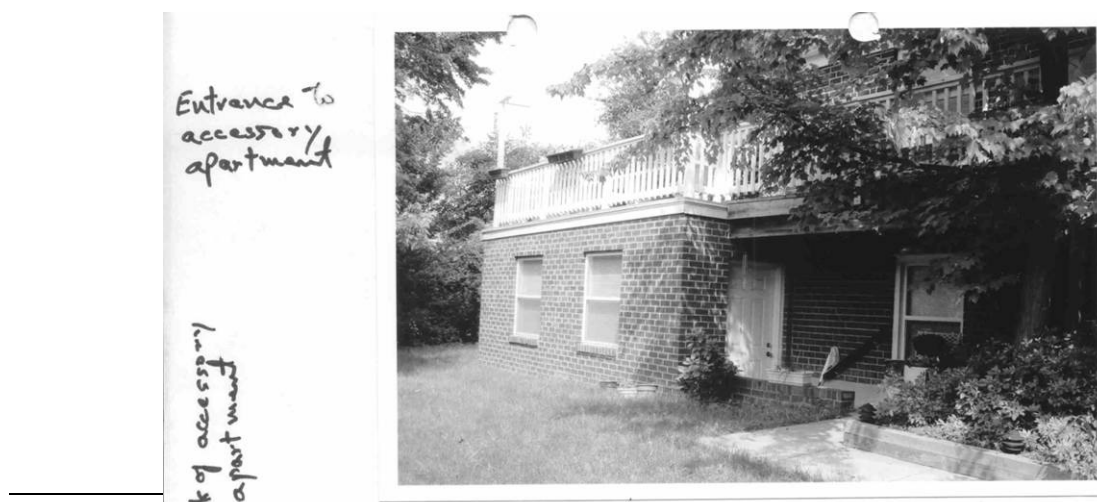
the (west) side of the house; fencing along the rear property line and part of the east property line; a garden shed and a wood shed in the rear yard; a paved driveway that is approximately 18 feet wide with an apron of about 20 feet, and that can fit four cars if two are within the right-of-way or two cars if none are within the right-of-way; a paved path to the front porch from the driveway; a paved path along the (west) side to the entrance of the apartment and a separate entrance to the rest of the basement.

The home is depicted in a photo supplied by Petitioner (Exhibit 8(a), top photo):



B. The Proposed Use

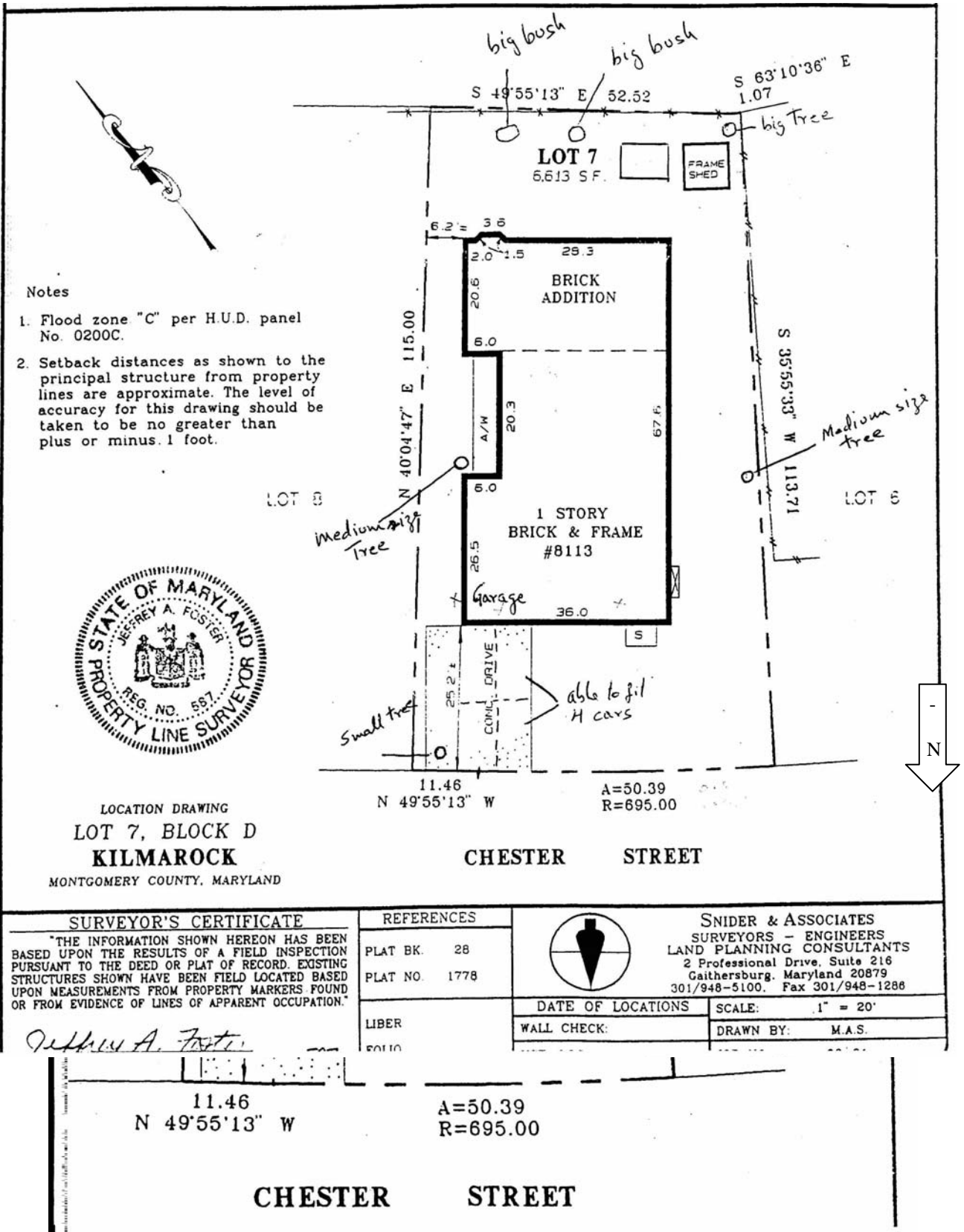
The proposed accessory apartment is located in the basement of an existing addition to the house and has a separate entrance on the side of the home. It is approached by a concrete walkway which runs along the side of the house. The entrance to the accessory apartment and a portion of the walkway are depicted below in the top photo from Exhibit 8(b).³



³ The grade of the property makes the “basement” addition appear at ground level.

Petitioner initially filed a site plan labeled "Landscaping & Lighting Plan" (Exhibit 4), which shows the location of the landscaping around the subject house, but not the lighting. It is shown below.

Technical Staff had suggested in their report (Exhibit 12, Condition 3) that a revised site plan had to be submitted. Petitioner has done so, and his revised site plan



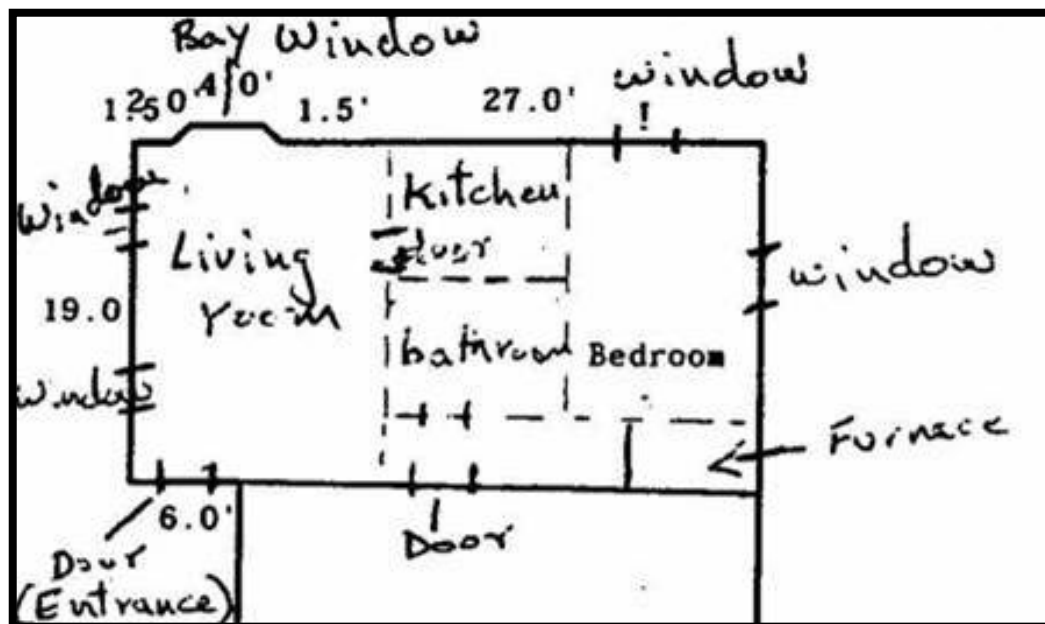
(Exhibit 14(a)), which shows the locations of external lighting fixtures, is shown below:

Technical Staff stated (Exhibit 14) that the additional site plan showing the lighting was “sufficient,” though Staff noted that it did not show the location of the front door to the main house, nor the path from it to the driveway. Nevertheless, Staff found these omissions not to be critical, and the Hearing Examiner agrees since the front door to the home and the path from it to the driveway are clearly depicted in Exhibit 8(a), reproduced on page 5 of this report.

The accessory apartment contains a living room, kitchen, bathroom, bedroom, hallway and furnace room, all of which occupy about 756 square feet, according to Technical Staff.⁴ Based on the amount of floor space and the single bedroom, the Housing Code Inspector’s report indicates that the accessory apartment may be occupied by no more than two unrelated people or a family of up to three.

The accessory apartment portion of the Floor Plan (Exhibit 5) is shown below:

Technical Staff found that the paved driveway can fit four cars “if two are within



the right-of-way or two cars if none are within the right-of-way.” Only two on-site spaces are required. Staff also noted that the walkway leading to both the apartment door and an additional door to the basement was adequate to ensure safety, and exterior lighting on the property appeared typically residential, adequately located, and unlikely to cause undue glare or light trespass.

C. The Neighborhood and its Character

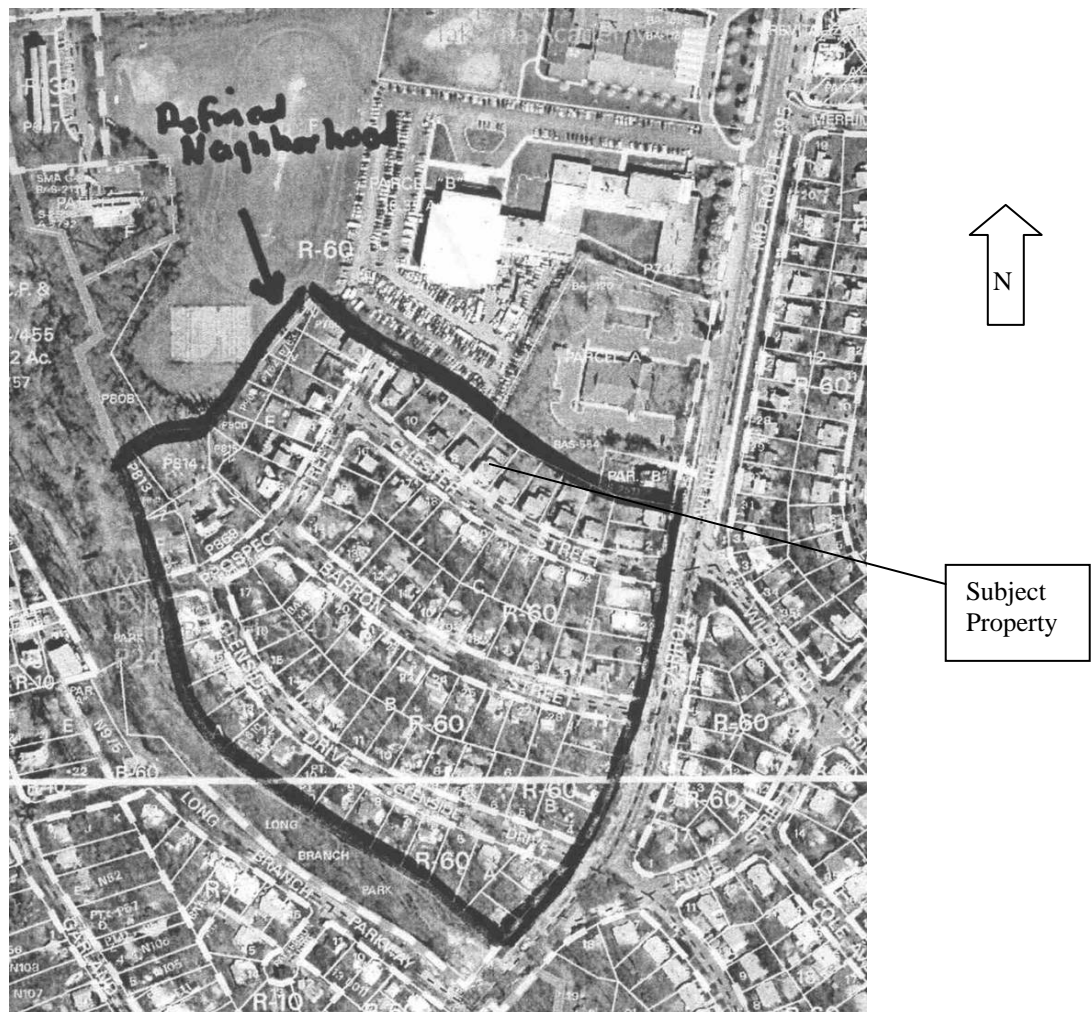
⁴ Petitioner lists the floor space as 665 square feet (Exhibit 3(b)). The Housing Code Inspector stated that the habitable space was 702 square feet. Tr. 18 and Exhibit 11. Based on the Hearing Examiner’s own examination of the Floor Plan, Exhibit 5, it appears that Petitioner’s estimate of 665 square feet might be the closest. Since the difference in these figures would not affect the outcome of this case, it is unnecessary to determine which is correct.

The neighborhood is residential in character and consists of mainly one family homes, on land zoned R-60. Technical Staff defined the neighborhood as “that area bounded to the east by Carroll Avenue (Md. Route 195), to the north the rear property lines of properties on the north side of Chester Street, to the west the rear property lines of properties on the west side of Prospect Street, and to the south the rear property lines of properties on the south side of Glenside Drive (which abut Long Branch Park).” The Hearing Examiner accepts that definition, and the defined neighborhood is depicted below on a portion of the “Defined Neighborhood” map that was attached to the Technical Staff report.

The area of the neighborhood as defined is, very roughly, about 240 acres. According to Technical Staff, the Takoma Academy, the Sligo Seventh Day Adventist Elementary School and the Davis Warner House, an historic house used as a bed and breakfast (S-2511), are just north of the defined neighborhood. Petitioner testified that his back yard abuts the Church of Jesus Christ of the Latter Day Saints, which was not mentioned in the Technical Staff report. Tr. 7. The only special exception Technical Staff found within the defined neighborhood is S-1164, an accessory apartment at 1208 Prospect Street, which was approved in 1985.

There has been no opposition from the neighborhood to the instant petition.

D. The Master Plan



The subject property is covered by the *East Silver Spring Master Plan, Approved and Adopted in December 2000*. As noted by Technical Staff, an important goal of the Plan is to “preserve existing residential character, encourage neighborhood reinvestment, and enhance the quality of life throughout East Silver Spring” (page 21). An accessory apartment does help preserve the residential character of the neighborhood and encourages residents to reinvest in their own property.

Although the Master Plan does not explicitly address accessory apartments, it does recommend, in general, confirming the existing residential zoning and retaining “the existing single-family detached character throughout most of East Silver Spring. . . .” (Page 26) Because Petitioner plans no external structural modifications to the subject property, the requested special exception will maintain the residential character of the area. Thus, it is fair to say that the planned use, an accessory apartment in a single family detached home, is not inconsistent with the applicable *Master Plan*.

Technical Staff (Exhibit 12) also quoted a recent study by the M-NCPPC noting that:

[accessory apartments] can be an excellent solution to the shortage of affordable housing by producing extra income for homeowners, dispersing the supply of moderate-cost housing more uniformly throughout the community, contributing to the tax base, reducing sprawl by providing more concentrated urban housing opportunities, and providing a means for extended family members to live together in a single site. (*Housing Montgomery: A Menu of Options for a Dramatic Increase in the Supply of Housing for our Workforce*, 3/6/03, *Montgomery County Planning Board Agenda Item #1*)

III. SUMMARY OF HEARING

At the June 14, 2004 hearing, testimony was heard from Petitioner and from Housing Code Inspector Alvin Clarkson, Jr.

In questioning by the Hearing Examiner, Petitioner testified he adopted the Technical Staff report as part of his evidence in the case.⁵ Tr. 12. He also testified that his back yard abuts the Church of Jesus Christ of the Latter Day Saints, which was not mentioned in the Technical Staff report. Tr. 7. Petitioner indicated that he would provide a revised site plan showing details missing on the original site plan and that he would file a copy of his deed showing the date of purchase as November 15, 2001. Tr. 12-14.

Petitioner testified that the house was built in 1915; that he lives in the subject property with his wife and three children; that no other parts of the house are rented out other than the accessory apartment; that the accessory apartment has the same street address as the house; that the accessory apartment is quite a bit smaller than the main dwelling; that he lives in that home full time; and that he understands he is required to live there as long as he rents out the accessory apartment. Tr. 15-16. According to Petitioner, parking is not a problem because he can park four vehicles in the “parking lot,”⁶ and the tenant has one car. Tr. 17.

Petitioner executed an affidavit of posting (Exhibit 13), and agreed to meet all the conditions set forth in the Housing Code Inspector’s Report (Exhibit 11). Tr. 12.

Housing Code Inspector Alvin Clarkson, Jr. testified that he property was inspected by him and Mr. McHugh on November 10, 2004.⁷ They found an improper lock on the door to the accessory apartment, which was corrected within two hours. The other violations they found were a gutter in the rear of the house that needed to be secured,

⁵ Mr. Clyde noted a typo in the second paragraph on page 4 of the Technical Staff report, in that the permit for the addition was issued in 1987, not 1997. Tr. 7. The Hearing Examiner also noted a typo on page 8 of the Technical Staff report, in the development standards chart, which should reference the 1941 ordinance in the second column regarding minimum front yard setbacks, not a “1928 ordinance.” Tr. 9.

⁶ The Hearing Examiner took this to mean in his double-wide driveway.

⁷ The inspection date on his report (Exhibit 11) is incorrectly listed as November 11, 2004. Tr. 11.

exterior windows that had to be caulked, a peephole needed to be installed on the front entrance to the accessory apartment, and there was some “solid waste”⁸ in the utility room that needs to be removed, along with a broken window glass in the bedroom. Everything else was in accordance with Montgomery County standards. Tr. 9-11. Mr. Clyde made it clear that he would make all the required repairs. Tr. 12.

According to Mr. Clarkson, the habitable floor space is 702 square feet. Tr. 18. Based on the square footage and other factors (*i.e.*, there is only one bedroom), Mr. Clarkson determined that the accessory apartment can be occupied by no more than two unrelated people, or a family of up to three members. Tr. 10. Mr. Clarkson also testified that there is “a two-car, double-wide driveway along with ample off-street parking.” Tr. 17.

The record was held open to give Petitioner the opportunity to submit a revised site plan and a copy of his deed, which he later did.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioner will have satisfied all the requirements to obtain the special exception, if he complies with the recommended conditions (Exhibit 12).

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.21. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory apartment. Characteristics of the proposed accessory apartment that are consistent with

⁸ By “solid waste,” Mr. Clarkson meant “items of clutter.” Tr. 10.

the “necessarily associated” characteristics of accessory apartments will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with accessory apartments, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff lists for following inherent characteristics of accessory apartments:

the existence of the apartment as a separate entity from the main living unit but sharing a party wall with the main unit; the provision within the apartment of the necessary facilities and spaces and floor area to qualify as a habitable space under the Building Code; provision of a separate entrance and walkway, and sufficient lighting; provision of sufficient parking; the existence of an additional household on the site; additional activity from that household, including more use of the outdoor space and more pedestrian, traffic, and parking activity; and the potential for additional noise from that additional household.

The undersigned concludes that, in general, an accessory apartment has characteristics similar to a single family residence, with only a modest increase in traffic, parking and noise that would be consistent with a larger family occupying a single family residence. Thus, the inherent effects of an accessory apartment would include the fact that an additional resident (or residents) will be added to the neighborhood, with the concomitant possibility of an additional vehicle or two. That is the case here. There are no unusual characteristics of the site.

Based on the evidence in this case, and considering size, scale, scope, light, noise, traffic and environment, I conclude, as did the Technical Staff, that there are no non-inherent adverse effects from the proposed use which would require denial of the petition.

B. General Conditions

The general standards for a special exception are found in Zoning Code §59-G-1.21(a). The Technical Staff report, the Housing Code Inspector’s report, the exhibits in this case and the testimony of the Petitioner and the Housing Code Inspector provide ample evidence that the general standards would be satisfied in this case.

Sec. 59-G-1.21. General conditions.

§5-G-1.21(a) -*A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

Conclusion: An accessory apartment is a permissible special exception in the R-60 Zone, pursuant to Code § 59-C-1.31.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is

compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.00 for an accessory apartment as outlined in Part C, below.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject property is covered by the East Silver Spring Master Plan, Approved and Adopted in December 2000. As noted by Technical Staff, an important goal of the Plan is to “preserve existing residential character, encourage neighborhood reinvestment, and enhance the quality of life throughout East Silver Spring” (page 21). An accessory apartment does help preserve the residential character of the neighborhood and encourages residents to reinvest in their own property. Moreover, the Plan recommends retaining “the existing single-family detached character throughout most of East Silver Spring. . . .” (Page 26) Because Petitioner plans no external structural modifications to the subject property, the requested special exception will maintain the residential character of the area. Thus, it is fair to say that the planned use, an accessory apartment in a single family detached home, is not inconsistent with the applicable *Master Plan*. Moreover, the Technical Staff noted that the County Council is supportive of mechanisms to provide affordable housing in the County, and accessory apartments are one such mechanism. Thus, the Staff concludes, and the Hearing Examiner agrees, that the proposed use is consistent with the *Master Plan* and the *General Plan* for development in the County.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: The proposed use will be in harmony with the general character of the neighborhood because no structural change to the house is proposed. As to parking, Technical Staff determined that “parking on the driveway (and on the street) is adequate to accommodate this use.” The Housing Code Inspector testified that there was “ample off-street parking” available. Thus, there should be no impact on the

neighborhood as far as parking. The proposed use also will not generate any significant change in traffic conditions.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: There is no evidence in the record to contradict Technical Staff's conclusion that there will be no adverse effects on the neighborhood due to the accessory apartment; nor will it be detrimental to the peaceful enjoyment, economic value or development of surrounding properties at the site. Therefore, the Hearing Examiner so finds.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Petitioner plans no external changes to his residence, and Technical Staff found that the special exception would cause none of the listed adverse effects. Technical Staff stated that the exterior lighting on the property appeared typically residential, adequately located, and unlikely to cause undue glare or light trespass. There is no evidence to the contrary, and the Hearing Examiner so finds.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: There is only one other special exception (an accessory apartment) in the defined neighborhood. Neither the Technical Staff nor the Hearing Examiner believes that the proposed special exception will increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: The evidence supports the conclusion that the proposed special exception would be adequately served by the specified public services and facilities. The Technical Staff notes in its Report (Exhibit 12) that "[t]he adequacy of public facilities for the one-family detached dwelling on the subject property was determined at the time of subdivision review."

- (i) *If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the*

time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision. Therefore, the public facilities review must include analysis of the Local Area Transportation Review ("LATR").⁹ The Technical Staff did do such a review, and concluded that the proposed accessory apartment use would add one additional trip during each of the peak hour weekday periods. Since the existing house, combined with the proposed accessory apartment, would generate fewer than 30 total trips in the weekday morning and evening peak hours, the requirements of the LATR are satisfied without a traffic study. See the July 2004 LATR Guidelines, of which the Hearing Examiner takes official notice.

Therefore, the Transportation Staff concludes, as does the Hearing Examiner, that the instant petition meets the LATR test. If applicable, it also meets the PATR test.

- (ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

Conclusion: Based on the evidence of record, especially the Technical Staff's conclusion that the proposed use "will not reduce the safety of vehicular or pedestrian traffic," the Hearing Examiner so finds.

C. Specific Standards

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 12), provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

Sec. 59-G-2.00. Accessory apartment.

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

(a) Dwelling unit requirements:

- (1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

⁹ The Policy Area Transportation Review ("PATR") was abolished, effective July 1, 2004, by the 2003-2005 Policy Element of the Annual Growth Policy. Nevertheless, Technical Staff notes that there is remaining residential staging capacity in the Silver Spring/Takoma Park policy area.

Conclusion: Only one accessory apartment is proposed.

(2) *The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:*

- (i) *The lot is 2 acres or more in size; and*
- (ii) *The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

Conclusion: The apartment is located in the basement of an existing addition to the house, and therefore shares a wall in common, as required for a lot of this size (under an acre).

(3) *An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.*

Conclusion: No addition or extension of the main dwelling is proposed beyond the existing one.

(4) *The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.*

Conclusion: The original house was built in 1950. It therefore meets the “5 year old” requirement. DPS “finalled” the permit for the existing addition in 1991.

(5) *The accessory apartment must not be located on a lot:*

- (i) *That is occupied by a family of unrelated persons; or*
- (ii) *Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
- (iii) *That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

Conclusion: The proposed use does not violate any of the provisions of this subsection.

(6) *Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.*

Conclusion: Access to the accessory apartment is through a side door to the basement addition, which is recessed and partially obscured by landscaping. It is thus not visible from the street. There will be no change to the residential appearance of the dwelling.

(7) *All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.*

Conclusion: No external modifications are proposed.

(8) *The accessory apartment must have the same street address (house number) as the main dwelling.*

Conclusion: The accessory apartment will have the same address as the main dwelling.

(9) *The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet.*

Conclusion: The accessory apartment is clearly subordinate to the main dwelling, as it occupies approximately 702 square feet in the basement addition of Petitioner's home.

59-G § 2.00(b) Ownership Requirements

- (1) *The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.*

Conclusion: The Petitioner lives in the main dwelling with his family and plans to continue living there.

- (2) *Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

Conclusion: The Petitioner acquired the property in 2001 according to the deed (Exhibit 14(b)), easily more than one year before the filing of the petition.

- (3) *Under no circumstances, is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.*

Conclusion: The Petitioner will receive compensation for only one dwelling unit.

- (4) *For purposes of this section owner means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the Board.*

Conclusion: The Petitioner and his wife are the owners of the property.

- (5) *The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.*

Conclusion: Not applicable

59-G § 2.00(c) Land Use Requirements

- (1) *The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.*

Conclusion: The subject lot is approximately 6,613 square feet in size. The following chart from page 8 of the Technical Staff Report (Exhibit 12) demonstrates compliance with all development standards:

Development Standard – “A” Residence Zone per 1941 Ordinance/R-60/Acc. Apt.	Required/ Allowed	Provided	Compliance
Maximum Building Height: (R-60)	2.5 stories or 35 feet	1 story	Yes
Minimum Lot Area: (Acc. Apt.)	6000 s.f.	6,613 s.f.	Yes
Minimum Width at Front Building Line: (“A” Residence Zone – 1941)	50 feet	61.85 feet	Yes
Minimum Width at Proposed Street Line: (“A” Residence Zone – 1941)	No standard (60 feet per R-60 Zone)	61.85 feet	Yes
Minimum Front Yard Setback: (“A” Residence Zone – 1941)	25 feet (see 1941 Ordinance ¹⁰ for full quote of standard, which has more provisions)	@ 25.2 feet	Yes
Minimum Side Yard Setback: (“A” Residence Zone - 1941)	7 feet each side	@ 6.2 feet +/- 1 ft., @ 13 feet	Yes
Minimum Rear Yard Setback: (“A” Residence Zone - 1941)	Min. av. Depth of 20 feet, but in no case less than 15 feet.	@ 21 feet	Yes
Maximum Building Coverage: (“A” Residence Zone - 1941)	No standard (35% including accessory structures per R-60)	<35%	Yes
Maximum Floor Area for Accessory Apartment: (Acc. Apt.)	1200 s.f.	@ 756 s.f., per staff measurements from house location plan	Yes

(2) An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use(see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).

Conclusion: There is only one other accessory apartments in the area. Both the Technical Staff and the Hearing Examiner conclude that the proposed special exception will not create an excessive concentration of similar uses.

(3) Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces unless the Board makes either of the following findings:

- (i) More spaces are required to supplement on-street parking; or*
- (ii) Adequate on-street parking permits fewer off-street spaces.*

¹⁰ The Ordinance cited here was incorrectly listed in the Technical Staff report as the “1928 Ordinance.” Technical Staff notified the Hearing Examiner of the error (Tr. 9), and the chart shown above lists the correct ordinance.

Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.

Conclusion: There is room for at least two, and possibly four, off-street parking spaces in Petitioner's driveway. Moreover, there is sufficient on-street parking across the street to accommodate the proposed use, according to Technical Staff.

D. Additional Applicable Standards

Not only must an accessory apartment comply with the zoning requirements as set forth in 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. As discussed in Part II. B. of this Report, the Housing Code Inspector's report (Exhibit 11) notes certain issues, and has recommended that occupation of the accessory apartment be limited to no more than two unrelated persons, or a family of three. As noted above, Petitioner has agreed to meet all conditions.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that Petition No. S-2619 for a special exception for an accessory apartment located at 8113 Chester Street, Takoma Park, Maryland, be GRANTED, with the following conditions:

5. The Petitioner is bound by Petitioner's testimony, representations and exhibits of record;
6. The Petitioner is bound by the conditions set out in the Memorandum of Alvin Clarkson, Jr., Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 11), that Petitioner will house no more than two unrelated persons, or a family of three, in the accessory apartment; and will promptly take the following steps:
 - 1) Secure exterior gutter on rear of house
 - 2) Caulk all exterior windows in Accessory Apartment
 - 3) Install peep hole in unit entrance door
 - 4) Remove solid waste in utility room
 - 5) Replace broken window glass in bedroom
7. Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located; and
8. Petitioner must not receive compensation for the occupancy of more than one dwelling unit.

Dated: January 13, 2005

Respectfully submitted,

Martin L. Grossman
Hearing Examiner